

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Odom Bryant, #362713,)
Applicant,)

Case No.: 2018-CP-26-03141

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
HORRY COUNTY
2022 MAR -9 P
RENEE M. ELY
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed May 23, 2018. Respondent made its return on August 21, 2018, requesting an evidentiary hearing be convened. An evidentiary hearing was held on October 27, 2021, at the Horry County Courthouse. Matthew S. Swilley, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel, the Honorable Dean Mureddu, Municipal Court Judge, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In October 2013, the Horry County Grand Jury indicted Applicant for first degree burglary (2013-GS-26-04316) and two counts of murder (2013-GS-26-04317 and -04318). Dean Mureddu and Casey Brown, Esquires represented Applicant. Bradley Richardson and Monica Wooten of the Fifteenth Circuit Solicitor's Office prosecuted the case. On January 12-15, 2015, Applicant proceeded to trial before the Honorable

Benjamin Culbertson, circuit court judge, and a jury for the two counts of murder alone. Applicant was found guilty on both counts and Judge Culbertson sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal on January 23, 2015, that was perfected by Reid T. Sherard, Esquire, who raised the following two issues:

1. Did the trial court err by allowing the State's main witness to reference the status of the case against a conspiracy co-defendant when the evidence was irrelevant and highly prejudicial and when counsel stipulated the evidence would not be admitted, the trial court ruled the evidence would not be admitted, and the defense reasonably relied upon the stipulation and ruling?
2. Did the trial court err by failing to follow the proper *Batson* procedure and shifting the burden to the defense, and thereafter improperly granting the State's *Batson* motion, resulting in a member of the venire struck by the defense being on the jury?

The parties proceeded to oral arguments on May 9, 2017. Applicant was represented by Attorney Sherard and Caroline M. Scrantom, Esquire, of the South Carolina Attorney General's Office, represented the State. By opinion decided July 26, 2017, the South Carolina Court of Appeals affirmed Applicant's convictions. *State v. Bryant*, Op. No. 2017-UP-302 (S.C. Ct. App. filed July 26, 2017). The remittitur was issued on August 11, 2017.

Summary of Relevant Facts

Applicant was convicted for the execution-style murders of victims Amos and Thomas Hatfield at the direction of Sandy Lee Locklear, Amos' wife, who orchestrated the executions to collect from Amos' life insurance policy. Locklear called 911 early morning of August 19, 2012, to report an ongoing burglary and a shooting. (Tr. 156, 160-61). Arriving minutes later, law enforcement scanned the premises and witnessed two men lying face-down through the home's back door. (Tr. 164). Amos had a single gunshot wound to the back of the head and an additional laceration on his forehead. (Tr. 228). A green pillow lay several inches in front of his head. The pillow was drenched with blood, and it bore a burn mark surrounding a through-and-through

circular hole. The blood and burn mark indicated that the fatal shot was fired flush against the pillow, which was simultaneously placed against the back of the victim's head. (Tr. 229, 232).

Amos' son's, Thomas', body was found several inches away from Amos'. (Tr. 233). Thomas laid prone, and his injuries were remarkably similar to Amos' in that he sustained a laceration to his forehead and a single gunshot wound to the back of the head. (Tr. 235-36). A coffee table laid, flipped upside down, to the immediate left of the victim's body. (Tr. 236, 454). As with Amos, blood splatter and a pillow with a burnt through-and-through hole were found three to four inches in front of Thomas' head. (Tr. 236-38).

Hearing a woman's voice calling for assistance, the first responding officer approached a bedroom and found Locklear on the bed in nightclothes, appearing distraught. (Tr. 165-66, 173). Locklear exhibited no signs of an assault beyond her contention that she was bound with tape and sexually assaulted. (Tr. 214-15). She was not bound when the officers arrived, but one officer witnessed Locklear pull a piece of tape off of herself. (Tr. 173-75). After clearing the residence and finding no other occupants, the officer assisted Locklear from the bedroom to his patrol car. (Tr. 167-68). Law enforcement collected an off-white brassiere and a pair of black "stretched" underwear from the bed. They considered both items damaged and potential evidence of the sexual assault that Locklear alleged occurred. (Tr. 256-57).

An inspection of the crime scene returned a piece of black tape cast off in the hallway and a similar roll of tape on a shelf nearby. (Tr. 245-48). A first aid kit was spilled out of a nearby toiletry cabinet. (Tr. 249-50). The remainder of the mobile home showed little to no sign of struggle or disarray; no beds were flipped or drawers emptied. (Tr. 251-55). Additionally, law enforcement found no signs of forced entry. (Tr. 218, 221).

Within hours of the 911 call, law enforcement located a burned vehicle abandoned



roadside, approximately five miles away from the crime scene. (Tr. 278, 367). Locklear claimed her assailant stole the vehicle when he left the scene. (Tr. 367). Though completely burned and containing no contents important to the investigation, the VIN number on the burned sedan matched the car on loan to Locklear. (Tr. 279, 281-82). Locklear's car dealership loaned her the vehicle while her own was serviced. (Tr. 370).

Law enforcement took Locklear to the hospital because of her alleged sexual assault. Afterward, she went to the station and was questioned, first as a victim and witness and then, as questioning continued, as a suspect post-*Miranda* warnings, because the leads provided proved false when investigated. (Tr. 373-77). After questioning, Locklear was charged with two counts of murder. (Tr. 376-77). During her interrogation, Locklear provided the names of two suspects: Nehemiah James Evans, and a second she knew by his street name, "PooPoo", who was later identified as Applicant. (Tr. 377). Applicant assisted in Evans' landscaping business and, together, they cut the grass at Locklear's house. (Tr. 377, 430). Locklear informed law enforcement that Applicant and Evans frequented the Vasco convenience store near her house. (Tr. 430). The store's surveillance footage showed Applicant arriving at the store at 11:06 on the same morning as the murders with a pearl-handled gun at his waistband. (Tr. 431-34).

The investigation revealed that Locklear lived in Tabor City, North Carolina, in a home purchased for her by her husband, Amos. (Tr. 340-41). After hearing about the murders, Faye Hunt, Locklear's cousin and friend, voluntarily informed law enforcement of Locklear's living arrangement and marriage. (Tr. 343). Additionally, Hunt told law enforcement about a life insurance policy that she witnessed Amos hand to Locklear for safekeeping. (Tr. 342). Amos left the Tabor City home that night, and Locklear proclaimed to Hunt that "if that son-of-a-bitch died today [she'd] be a rich bitch tomorrow." (Tr. 342). When law enforcement executed a search



warrant on the Tabor City home, they located the life insurance policy naming Locklear and Amos' daughter as beneficiaries. (Tr. 419-20).

Hunt told law enforcement that Locklear offered to sell Hunt's boyfriend a small, pearl-handled pistol about five months prior to the murders, which Locklear took from the top of her refrigerator and showed to Hunt. (Tr. 344-45). That pistol matched the description of a pistol that Amos' brother, Clayton Hatfield, loaned to Amos several years prior to the murder. Amos never returned the pistol to Clayton. Clayton described the pistol as a white or pearl-handled .25 caliber Lorcin. (Tr. 325-26). Investigators did not find the pistol or any other firearms in the Hatfield's mobile home during the investigation. (Tr. 252). However, photographs of Applicant entering the convenience store revealed a pearl-handled pistol in his pocket. (Tr. 434-35).

United States Marshals took Applicant into custody about a month after the incident. (Tr. 437). Applicant provided a recorded voluntary statement to law enforcement while in custody. (Tr. 440). Initially, Applicant was not forthcoming and asked to stop the interview so he could talk to a lawyer. (Tr. 463). Shortly thereafter, Applicant voluntarily reinitiated the interview after being re-advised of his right to counsel. (Tr. 442-44).

Ultimately, Applicant divulged his participation in the incident. Applicant admitted he knew Evans because they cut grass together, and he met Locklear through Evans' landscaping venture. (Tr. 472). On the night of the incident, Evans enlisted Applicant's help and the two met with Locklear. (Tr. 474-75). Together they went to the Hatfield's home "to scare a dude up"—meaning Thomas—as a favor for Locklear. (Tr. 476-77). Locklear signaled Applicant to enter the back door through texts. (Tr. 191-93, 477-78). Applicant stated he did not expect any payment for his participation. (Tr. 478). Despite bringing a baseball bat along, he did not expect anyone to be harmed. Applicant maintained that he did not know anyone had a gun when he first entered the

mobile home. Applicant was also able to confirm that no one subjected Locklear to sexual assault. (Tr. 479-80, 484). As to the murders, Applicant stated that Locklear shot the victims while he was in a back bedroom looking through the residence. (Tr. 482). Applicant left quickly after the gunshots, taking nothing but the baseball bat and the Kia they arrived in. (Tr. 485). Applicant admitted to burning the Kia. (Tr. 485).

Current Action before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Violation of Due Process."
 - a. "Court lacked jurisdiction to indi[ct]."
2. "Ineffective Assistance of Counsel."
 - a. "fail[ure] to properly investigate."
3. "Violation of Constitution[al] Rights."
 - a. "the burden of proof was not on the state, but shifted to me to prove."

Applicant, through PCR Counsel, made an amended PCR application on October 25, 2021, alleging:

1. "Trial Counsel was ineffective for opening the door to an issue that had previously been stipulated to by the parties to remain outside the jury."
 - a. "Trial Counsel and the Assistant Solicitor consented on the record to keep out of evidence the status of the co-defendant's cases. During trial counsel's cross-examination of Brandon Strickland, trial counsel elicited testimony from Strickland that applicant verbally asserted the co-defendant 'cut a deal' during applicant's interview with law enforcement."
2. Trial Counsel was ineffective for failing to properly argue the appropriate procedure regarding a *Batson v. Kentucky* challenge to the jury selection and also failing to articulate a proper race-neutral reason he struck certain jurors."
 - a. "After the selection of a jury, the state made a motion pursuant to *Batson v. Kentucky* and the Court granted the motion after trial counsel did not articulate a reason as to why he struck certain jurors and did not assert [that] the State had to initially make a prima facie showing as to which of the Defendant's strikes were based on bias."



At the PCR hearing, Applicant proceeded forward on all claims raised in the amended PCR applications, as well as:

1. Ineffective assistance of counsel for failure to show the discovery to Applicant.
2. Ineffective assistance of counsel for not objecting to the State's shifting of the burden of proof.
3. Ineffective assistance of counsel for waiving Applicant's right to a preliminary hearing without his consent.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Counsel Testimony

Counsel stated that he has been practicing law since 1993, beginning as a public defender before going into private practice and then taking the bench as a municipal court judge. Counsel stated he exclusively practice criminal defense work, focusing on felonies and DUIs. Counsel stated he was assigned this case the summer of 2013 through a 608 contract through the public defender's office. Counsel stated that he had been practicing law for twenty-one years when he was assigned this case. Counsel testified that Applicant was arrested and in custody for a few months when he took on the case. Counsel stated that he knew Applicant had co-defendants and Counsel had some background on the case. Counsel stated he met with Applicant to get some information on the case.

Counsel stated that the theory of the State's case was that this was a murder for hire where they believed Applicant was the actual shooter of the two victims. Counsel stated that he did not expect there to be any plea offers, much less anything favorable. He stated he spoke with Applicant through the representation about how he was facing life without parole and that it was likely they were going to trial because he would likely be sentenced to life on a double homicide,

even if he pled. Counsel stated that, given the circumstances, he told Applicant it would be wise to fight the case at trial, regardless of the evidence. Counsel testified that one of Applicant's co-defendants, Locklear, was convicted on two counts of murder prior to Applicant's trial. Counsel stated that Evan's case was pending at the time of Applicant's trial because he did not cooperate with the State.

Leading up to Applicant's arrest, Counsel stated that Locklear called the police, reported a rape, and described two black men, whom she said broke into the house and then raped and robbed her before leaving. Counsel testified that the police quickly determined her story did not add up and, after being interrogated, she ultimately gave enough information to identify Evans. Evans implicated Applicant to the police, but did not testify at Applicant's trial. Counsel testified that the strongest evidence the State had was that Evans's statement that Applicant and Locklear made a deal. Counsel testified that Evans placed Applicant at the scene. Counsel testified that there was also surveillance video footage of Applicant shortly after the double homicide in the area with a gun in his waistband believed to be the murder weapon. Counsel stated that he had phone records and confirmed his number. Counsel testified that Locklear was texting him prior to the murders. Counsel testified that Applicant gave a statement. Counsel stated that there were texts between Applicant and the co-defendant prior to killings that the backdoor was open. Counsel testified that Applicant admitted it was his phone number and his co-defendants also placed him there. Counsel testified that Applicant stated he did not do it, or know it would happen, but he was on scene. Counsel stated that he was never able to verify Applicant's story about what happened to the gun.

Counsel stated that the State's motion was granted because he was striking white men. Counsel stated he explained that the striking of white men was inadvertent, but the judge was not



satisfied with his chosen explanation. Counsel stated that the prosecutor made the motion and they had the *Batson* hearing. Counsel stated that he never had a *Batson* motion levied against him before. He stated that the judge was seemingly looking for a detailed reason, but he mostly picks jurors by instinct, based upon their demeanor or background, as opposed to a detailed scientific process. Counsel stated he wanted younger people on the jury because they tend to be more open minded. Counsel stated that the Court found he was striking white men. Counsel stated that he disagreed with the Court's ruling, but could not convince the Court ~~of~~ of his position. Counsel stated that though he did not get the jury he originally wanted, he was unsure whether it would have made a difference in the outcome of the trial.

Counsel stated that Applicant gave a lengthy statement to the police and that a lot of it was inadmissible. Counsel stated that a *Jackson v. Denno* hearing was held, but he could not keep the statement out of evidence at trial. He testified that he told Applicant it would likely be deemed admitted beforehand. Counsel stated he talked to the prosecutor about redactions in the statement and an agreement was reached concerning redactions. Counsel testified that nothing came in accidentally or unintentionally.

Counsel stated that when a defendant's statement is deemed admissible, unless they testify at trial, they would be stuck with the contents of his police statement. Counsel stated that that is what happened in this case. Specifically, Counsel stated that Applicant's narrative was that Locklear lured Applicant and Evans to come in and rough her husband up some. However, once they arrived in the house, they discovered her plan was to kill her husband and his son and to blame the murders on Applicant and Evans. Counsel stated that Locklear wanted to kill her husband over a life insurance policy and that, after the murders, Applicant and Evans did not know what to do, so they fled out of fear and denied everything to the police. Counsel stated that their theory was



that Applicant was set up from the beginning.

Counsel stated that Brandon Strickland was an investigator associated with the case and that the lead investigator was not at trial. Counsel stated that at one point during cross-examination, Strickland stated that Applicant asked "James cut a deal, didn't he?" Counsel stated that this was a critical part of the case and he was being very careful about the questions he was asking. Counsel stated that Applicant was stating he did not know what was going on until he asked if Evans cut a deal. Counsel testified that the investigator spent about fifteen minutes questioning Applicant about not being truthful, and then Applicant provided a different narrative for about forty-five minutes thereafter. Counsel stated that he asked a direct question about reinitiating the interview, asking if Applicant stated he was lying and wanted to talk again. Counsel stated that Strickland essentially blurted out that Evans cut a deal, he objected, and then made a motion for a mistrial outside the presence of the jury. Counsel testified that the prosecutor's position was that Counsel opened the door, to which the Judge agreed. Counsel stated he disagrees with that ruling. Strickland said something that should not have been said but the mistrial was not granted. Counsel did not want this statement to be entered in at trial. Counsel stated that he probably did not renew his motion for mistrial throughout the course of the trial. He stated he thinks he likely did or would have if he remembered, but did not make a big deal when renewing motions because once the judge rules, the matter is decided. He stated he did not ask for a curative instruction, and would not do so now, because that would further draw attention to the statement.

On cross-examination, Counsel stated that his general trial strategy was to show Locklear was wife of a victim and she had a premeditated plan to kill her husband, the son was killed because he was present, and that she lured Applicant and Evans into the plan, setting them up from the beginning. Counsel stated he discussed trial strategy with Applicant between ten and twelve times.



Counsel stated that they were unsure whether Evans would testify against Applicant at trial, but that there was a lot of evidence in the case and all evidence procured was shared with Applicant. Counsel stated that he wanted Applicant to know he did not have to take his word for everything.

Counsel stated that Applicant placed himself at the scene at the time of the murder and phone records consisting of texts between Applicant and Locklear right before the incident. Counsel stated that there was convenience store video footage close by with a gun just after the murder, but no murder weapon was ever found. Counsel stated that the gun was silver and had a pearl handle. Counsel testified that the clerk testified to him being at the convenience store. Counsel stated that the State had evidence that the murder weapon was consistent with the weapon Applicant had at the convenience store. Counsel stated that all of this was brought up at trial.

Counsel acknowledged he gave reasons beyond an instinctual feeling about certain potential jurors, including that one person worked a government-affiliated job, another was an active security guard, and another is a youth pastor. Counsel stated that he was required to give reasons for the strikes, and so he did. Counsel stated that if there was something procedurally improper about how the Judge conducted the *Batson* motion he would have objected. However, Counsel stated that he did not see anything improper about the way he conducted the *Batson* motion and that he just disagreed with the result. Counsel stated that he thought the Judge was fair throughout the trial and that the issues he decided on could have gone either way. He stated he did not believe the Judge was unfair. After being refreshed, Counsel stated he recalled being asked about the scope of redirect examination of Strickland after his motion for a mistrial was denied, but the Judge decided see how everything played out.

Applicant Testimony

Applicant testified that he did not review all of his discovery with Counsel and that Counsel



only gave him what was important. Applicant stated that he met with Counsel seven to ten times. Applicant claimed this prevented him from having a fair trial. Applicant stated that no preliminary hearing was held and his right to a preliminary hearing was waived and no one was present. Applicant stated that nobody questioned the validity of the indictments leading up to trial. Applicant stated that no objection to the jury instructions was made. Applicant claimed that the hand of one, hand of all theory removes the State's burden to prove murder when the theory was that Applicant was the principal. Applicant stated that Counsel was ineffective for failing to call testimony or witnesses Tercsa Phillips or Joey Hardy. Applicant claimed that these witnesses could have testified as to where the gun was at the time. He stated that he had the gun because he was going to sell it for them.

On cross-examination, Applicant stated he was not shown discovery, but was given the things that Counsel felt were important to prevent confusing him with too much information. He stated that the Teresa Phillips interview contradicted the investigative report, stating that the interview reflected that evidence was missing. Applicant stated that there was a picture of a gun in her phone and that he had the gun box presented by the victim's family. Applicant claimed she could testify as to where the gun was around the time of the incident, which he claimed created an alibi until the court corrected him. Applicant stated he did not know he could have a preliminary hearing prior to trial, but stated that formal indictments were issued concerning the charges he was convicted of.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the ~~Spartanburg~~ ^{Harry} County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records,



the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant



decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Batson Motion

Applicant claims Counsel was ineffective for failing to articulate race-neutral reasons for using peremptory strikes pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). “Under *Batson* ... and later decisions applying *Batson*, parties are constitutionally prohibited from



exercising peremptory challenges to exclude jurors based on race, ethnicity, or sex.” *Rivera v. Illinois*, 556 U.S. 148, 148, 129 S. Ct. 1446, 1447 (2009). *See also Snyder v. Louisiana*, 552 U.S. 472, 128 S.Ct. 1203 (2008); *United States v. Lane*, 866 F.2d 103, 105 (4th Cir. 1989).

At trial, the State raised a *Batson* challenge because Counsel struck all white people, all but one were male, and acknowledged that only one white male and a few white females were not struck. Counsel gave race neutral reasons for striking the individuals he struck, including that one person held a government-affiliated job, another was an active security guard, and another was affiliated with the National Guard. (Tr. 33-35). The State responded with counter examples, to which Counsel admitted that he often strikes individuals based on their demeanor and his instinct about potential jurors. (Tr. 36-38). The Court granted the motion. (Tr. 38).

At the PCR hearing, Counsel testified that the striking of white men was inadvertent, but the judge was not satisfied with the explanation for the striking. He stated that the judge was seemingly looking for a detailed reason, but he mostly picks jurors by instinct, based upon their demeanor or background, as opposed to a detailed scientific process. Counsel stated he wanted younger people on the jury because they tend to be more open minded. Counsel stated that the Court found he was striking white men. Counsel stated that he disagreed with the Court’s ruling, but could not convince the Court of his position. Counsel stated that if there was something procedurally improper about how the Judge conducted the *Batson* motion he would have objected. Counsel stated that though he did not get the jury he originally wanted, he was unsure whether it would have made a difference in the outcome of the trial.

This Court finds Applicant has not established deficiency or prejudice. Concerning deficiency, Counsel provided race neutral reasons for why he struck certain jurors, all of which revolved around their backgrounds and demeanor towards him in the courtroom. The Judge found



the explanations provided insufficient, but this finding is rooted in disagreement concerning what is an appropriate reason, not over whether Counsel provided a race neutral reason at all. Counsel is not required to obtain a favorable decision from a judge to avoid a finding of deficiency, but is required to act reasonably. Counsel did so in providing race neutral reasons for striking the individuals he did, even if the reasons were not accepted by the Court. Thus, this Court finds that Counsel acted reasonable and was not deficient.

Additionally, no prejudice is found. Applicant has not shown that, but for Counsel being unsuccessful in executing his preferred peremptory strikes, the outcome at trial would have been different. Counsel acknowledged at the PCR hearing that he did not know whether it would have made a difference at trial had he been successful in his peremptory strikes. Further, this Court finds there was sufficient enough evidence for Applicant to be convicted at trial, regardless of who the jury members were, which consisted of texts between Applicant and the co-defendant about the door being open, the convenience store footage, that he was implicated by co-defendants, and that Applicant placed himself on the scene at the time of the murder in a police statement. Thus, even if Counsel was deficient, no prejudice is found flowing therefrom. Accordingly, relief is denied on this ground.

Eliciting Inadmissible Statements

Applicant claims Counsel was ineffective for eliciting inadmissible statements. Specifically, Applicant takes issue with this section of the cross-examination of Sargent Brandon Strickland:

Q: So when he reinitiated the interview, according to him, basically, he told you all, okay, I was lying, now I'm going to tell you what really happened, can you sum it up, something like that? Do you want me to say it a different way?

A: I'll say exactly what he told me. He said as we're walking out, he said, James cut a deal, didn't he; that is what he said to me.



(Tr. 466).

Once this statement came in at trial, Counsel requested the jury be excused from the courtroom so he could take up a matter of law. (Tr. 466). Counsel then moved for a mistrial. (Tr. 467). The Court denied the motion, stating Counsel opened the door and it was not hearsay. (Tr. 468-69). The Court found the statement was sufficiently responsive to the question posed, even if it was not a “yes” or “no” answer. (Tr. 469-70). Counsel requested clarification on how much latitude the Court would grant the State on re-direct examination on that issue, to which the Court stated he would deal with the issue as it arose. (Tr. 469-70). The State stated the only question on the issue they would pose on re-direct was whether the Sargent informed Applicant of any information James provided to law enforcement, stating it thought the answer was a no. (Tr. 470). The Court indicated that was fine and Counsel did not object. (Tr. 470).

At the PCR hearing, Counsel stated this was a critical part of the case and that he was intentionally being careful about the questions posed. Counsel stated he asked a pointed question on cross-examination about Applicant’s decision to reinitiate the interview asking if Applicant stated he was lying and wanted to talk again. Counsel stated that the Sargent blurted out that Applicant asked if James cut a deal, to which Counsel moved for a mistrial once the jury left the room. Counsel testified that the prosecutor’s position was that Counsel opened the door, to which the Judge agreed. Counsel stated he disagrees with that ruling. Counsel stated that he probably did not renew his motion for mistrial throughout the course of the trial. He stated he thinks he likely did or would have if he remembered, but did not make a big deal when renewing motions because once the judge rules, the matter is decided. He stated he did not ask for a curative instruction, and would not do so now, because that would further draw attention to the statement. On cross-examination, Counsel stated he recalled being asked about the scope of redirect examination of

Strickland after his motion for a mistrial was denied, but the Judge decided see how everything played out.

This Court finds Counsel was not deficient. Counsel asked a question he believed was closed and could not open the door to testimony provided if appropriately responded to. Once the witness blurted out the incriminating statement, he acted reasonably in moving for a mistrial and, thereafter, asking how broad the scope on re-direct on this issue would be. He provided an objectively reasonable trial strategy for not requesting a curative instruction; namely, that requesting one would draw more attention to the statement. At the PCR hearing, he stated he did not think the question was improper in retrospect, but stated that the witness's answer was not responsive to the question posed and the Court reached a ruling on the issue he still disagrees with; namely, that he elicited the answer through his question. This Court finds Counsel was not deficient because he asked a question he reasonably thought was closed and took reasonable measures to remedy the situation when the statement was made.

Additionally, even if Counsel was deficient, Applicant was not prejudiced as a result. Co-defendant Locklear identified Applicant by his street name and informed law enforcement he frequented a convenience store, where he was caught on tape with the gun used in commission of the crime. (Tr. 377, 430-34). Locklear's cousin testified at Applicant's trial that the gun in the footage, which had a unique pearl handle, was in Locklear's possession. (Tr. 342-45). Locklear's cousin also testified that Locklear indicated that she came into possession of her husband's life insurance policy and told her "if that son-of-a-bitch died today [she'd] be a rich bitch tomorrow." (Tr. 342).

Additionally, Applicant provided a recorded voluntary statement to police, where he ultimately stated that Evans enlisted Applicant's help "to scare a dude up." (Tr. 474-77). Locklear

signaled Applicant to enter the back door through texts, which were entered into evidence. (Tr. 191-93, 477-78). Despite bringing a baseball bat along, he did not expect anyone to be harmed and maintained that he did not know anyone had a gun when he first entered the home. (Tr. 479-80, 484). Applicant stated that Locklear shot the victims while he was in a back bedroom looking through the residence. (Tr. 482). Applicant left quickly after the gunshots, taking nothing but the baseball bat and the Kia they arrived in, which he admitted to burning the Kia. (Tr. 485).

Thus, this Court finds that, given the other incriminating evidence against Applicant, even if Counsel was deficient for eliciting the statement, Applicant was not prejudiced as a result. There was sufficient enough evidence for the jury to find Applicant guilty even if it was not elicited. Accordingly, because Applicant has not established deficiency nor prejudice, relief is denied on this ground.

Waiver of Preliminary Hearing

Applicant's claim that Counsel was ineffective for waiving the preliminary hearing is without merit. In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP.

Here, Applicant was indicted by the grand jury in October 2013. No showing of Applicant requesting a preliminary hearing before being indicted was made in the PCR hearing or before trial. Accordingly, Applicant has seemingly waived his right to a preliminary hearing and cannot request one now that he has been convicted. Thus, relief is denied on this ground.

Shifting Burden of Proof

Applicant's claim that the State shifted its burden of proof in showing Applicant was guilty



of murder as a principal by raising the claim under the hand of one hand of all theory. “‘Under the ‘hand of one is the hand of all’ theory [of accomplice liability], one who joins with another to accomplice an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’” *State v. Thompson*, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007) (quoting *State v. Condrey*, 394 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002)). “‘A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.’” *Id.* at 262, 647 S.E.2d at 705 (quoting *Condrey*, 394 S.C. at 194, 562 S.E.2d at 324). Though “[m]ere presence and prior knowledge that a crime was going to be committed, without more is insufficient to constitute guilt”, “‘presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal].’” *Id.* (quoting *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977)). “‘In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.’” *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010). *See also Condrey*, 394 S.C. at 193, 562 S.E.2d at 324 (stating that “[a] formally expressed agreement is not necessary to establish the conspiracy” that brings the accomplice to the crime scene).

In similar cases, guilty convictions were sustained if there was sufficient evidence indicating a common scheme or plan, regardless of whether or not the defendant fired the fatal shot. *See Gibson*, 390 S.C. at 355, 701 S.E.2d at 770 (finding sufficient evidence existed indicating the defendant participated in a common scheme or plan with his co-defendant when he agreed to act in concert with his co-defendant who fired the fatal shot when defendant informed co-defendant

of the situation, that the call to pick him up from the bar was not solely for the purpose of removing defendant from the scene, and that defendant was aware of the firearm available for him to retrieve from his co-defendant's car); *State v. Dickman*, 341 S.C. 293, 534 S.E.2d 268 (2000) (finding that enough evidence existed to sustain a murder conviction when the appellant acted with his co-defendant pursuant to a common scheme or plan when appellate told a friend the date the murder would take place, arranged the incident with the co-defendant, retrieved a gun set aside by the co-defendant, and handed the gun to co-defendant, who promptly fired the fatal shot).

Regardless of whether or not Applicant was the shooter, he could still be found guilty as a principal under the hand of one hand of all theory. This is not a burden shifting mechanism, but a way of proving an individual is guilty of the crime charged, regardless of whether or not it is established that he was, in fact, the shooter. Thus, the allegation that the burden of proof shifted from the State to Applicant is meritless. Accordingly, Counsel is not ineffective for failing to object to this and no prejudice is found flowing therefrom. Hence, relief is denied on this ground.

Failure to Show Discovery

Applicant's claim that Counsel was ineffective for failing to show Applicant all the discovery in the case was without merit. Counsel credibly testified that the State had a lot of evidence in this case and that all evidence produced in the case was shared with Applicant. Additionally, though Applicant stated that Counsel did not share all discovery with him, he did not state exactly what was not shown to him or how it would have impacted the trial proceedings. Accordingly, this Court finds that Counsel was not deficient on this ground and no prejudiced flowed therefrom. Thus, relief is denied on this ground.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not



established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 2 day of March, 2022.



ROBERT E. HOOD
Presiding Judge
Fifteenth Judicial Circuit



, South Carolina.